

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

**TIMOTHY HICKMAN v. HOWARD CARLTON, WARDEN, and the
STATE OF TENNESSEE**

**Appeal from the Circuit Court for Johnson County
No. 4821 Lynn W. Brown, Judge**

No. E2006-00860-CCA-R3-HC - Filed September 7, 2006

The petitioner, Timothy Hickman, appeals from the trial court's order dismissing his petition for writ of habeas corpus. The State has filed a motion requesting that this court affirm the trial court's denial of relief pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. The petition fails to establish a cognizable claim for habeas corpus relief. Accordingly, the State's motion is granted, and the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed
Pursuant to Rule 20, Rules of the Court of Criminal Appeals**

NORMA MCGEE OGLE, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and JAMES CURWOOD WITT, JR., J., joined.

Timothy Hickman, Mountain City, Tennessee, Pro se.

Paul G. Summers, Attorney General and Reporter; Renee W. Turner, Assistant Attorney General; and Joe C. Crumley, Jr., District Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

The petitioner was indicted by a Davidson County Grand Jury on charges of aggravated rape, especially aggravated kidnapping, aggravated robbery, reckless endangerment, unlawful possession of a weapon, and possession of a prohibited weapon. The petitioner entered guilty pleas to two counts of aggravated rape and one count of aggravated robbery, and the remaining charges were dismissed. Pursuant to his plea agreement, he was sentenced as a Range I, standard offender to consecutive 20-year sentences for the aggravated rape charges and a concurrent 10-year sentence for aggravated robbery. See Timothy John Hickman v. State, No. 01C01-9711-CR-00527, 1998 WL 305505 (Tenn. Crim. App. at Nashville, June 11, 1998) (affirming denial of post-conviction relief based on claims of ineffective assistance of counsel and an unknowing and involuntary guilty plea). No direct appeal was taken.

On January 24, 2006, the petitioner filed a petition for writ of habeas corpus in which he raised a double jeopardy claim as his sole ground for relief. More particularly, the petitioner asserted that documents of record, including the arrest warrant and indictment, failed to allege that more than one act of sexual penetration occurred, leaving the trial court without jurisdiction to impose “dual punishment for one criminal episode.” The petitioner sought reversal and dismissal of his second aggravated rape conviction. The trial court dismissed the petition, finding, without further elaboration, that “[n]othing in the petition would support a finding by this court that petitioner’s conviction is void or that his sentence has expired.” The instant appeal followed.¹

In Tennessee, “[a]ny person imprisoned or restrained of his liberty, under any pretense whatsoever, except [those held under federal authority], may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment and restraint.” Church v. State, 987 S.W.2d 855, 857 (Tenn. Crim. App. 1998) (quoting Tenn. Code Ann. § 29-21-101). A writ of habeas corpus may be granted only when the petitioner has established lack of jurisdiction for the order of confinement or that he is otherwise entitled to immediate release because of the expiration of his sentence. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993); see State ex rel. Wade v. Norvell, 443 S.W.2d 839, 840 (Tenn. Crim. App. 1969). A petition seeking issuance of a writ of habeas corpus may be summarily dismissed by a trial court if it fails to indicate that the petitioner’s conviction is void. See Tenn. Code Ann. § 29-21-109.

In the present case, the petitioner has not established a cognizable claim for relief even if his claim is true. An allegation of double jeopardy does not render a conviction void, but merely voidable. Joseph L. Coleman v. Tony Parker, W2004-01527-CCA-R3-HC, 2005 WL 564153, at *2 (Tenn. Crim. App. at Jackson, Mar. 10, 2005), perm. to appeal denied, (Tenn. 2005); William A. Ransom v. State, No. 01C01-9410-CR-00361, 1995 WL 555064, at *3 (Tenn. Crim. App. at Nashville, Sept. 20, 1995). A judgment which is voidable can be attacked only by a petition for post-conviction relief, not through habeas corpus procedures. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). As noted, however, the petitioner has previously sought post-conviction relief, and his petition was denied on its merits. He may not, therefore, present his double-jeopardy claim in a second post-conviction petition attacking the same judgment. See Tenn. Code Ann. § 40-30-102(c). In summary, the trial court properly dismissed the petition.

Upon due consideration of the pleadings, the record, and the applicable law, the court concludes that the petitioner has not established a cognizable claim for habeas corpus relief. Accordingly, the State’s motion is granted. The judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

NORMA MCGEE OGLE, JUDGE

¹The record reflects that the notice of appeal was untimely filed by approximately six weeks. The State has not moved for dismissal, however, and we waive the filing of the notice of appeal in the interest of justice. See Rule 4(a), Tenn. R. App. P.